THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P. NO. 14688 of 2006

DATED: 11-08-2006

Between:-

Gogula Venkata Reddy s/o Gogula Seetha Reddy, aged 30 years, R/o Manchikallu, Rentachintala Mandal, Guntur District.

…PETITIONER

And

1. Government of Andhra Pradesh, represented by the Secretary, Home Department, Secretariat Buildings, Hyderabad
2. The Collector & District Magistrate, Guntur
3. Superintendent of Central Prison, Rajahmundry, East Godavari District.

…
RESPONDENTS

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O R D E R (per Hon'ble Sri Justice D. Appa Rao)

Sri Gogula Seetha Reddy s/o Peda Pulla Reddy, was ordered to be detained by the 2nd respondent, Collector & District Magistrate, Guntur, in Rc. No. 1/2006 (P.D), dated 24.06.2006, under Section 3 (1), 3 (2) read with Section 2 (a) and 2 (g) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Gundas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the son of Sri Gogula Seetha Reddy, challenges the validity of the order of detention as illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of Habeas Corpus.

3. The grounds of detention are based on the fact that, prior to 24-11-2004 at Manchikallu village a case was registered against him along with 36 others in Crime No. 85/04 under Section 107 Cr.P.C. on the ground that all of them have indulged in series acts of violence and caused breach of peace. He was facing trial in the Court of R.D.O. Narasaraopet vide MC. No. 172/04.

Later on 7-3-2005 at about 8.30 PM the detenu along with 29 followers, belonging to Congress-I party, formed themselves into an unlawful assembly armed with deadly weapons and country made bombs and hurled a country made bomb to do away the life of one

Nageswara Rao, belonging to TDP party. Basing on which, a case in Cr. No. 19/2005 under Section 147, 148, 307 r/w 149 IPC and Sec. 3 & 5 of Explosive Substances Act was registered. A charge sheet was also filed and registered as P.R.C. No. 62/05 and is pending.

Again on 29.3.2005 another case was registered in Crime No. 28/2005 under Section 147, 148, 452, 427, 307 r/w 149 IPC and Sections 3 & 5 of Explosive Substances Act of Rentachintala P.S. against him and 44 others, on the ground that they formed themselves into an unlawful assembly, armed with deadly weapons and country made bombs attacked the house of one Seelamneni Sivamma and her party members. P.R.C. No. 63/05 is pending for committal.

Again on 31-03-2005 at about 10 AM a case in Crime No. 29/05 under Section 5 of Explosive Substances Act and 27 Arms Act was registered against the detenu on the ground that while conducting searches under the leadership of ASI Rentachintala, the police party found 235 country made bombs in 5 aluminum cans and a spear and 3 stout sticks in the hayrick situated on the eastern side of the village near Poleramma temple and seized the bombs in the presence of mediators and mediatornama. The charge sheet was filed in C.C. No. 105 of 2006 and case is posted for trial.

Again on 03-06-2005 a case in Crime No. 56/2005 under section 147, 148, 506 r/w 149 IPC was registered by Rentachinthala P.S. against the detenu and others when they formed into unlawful assembly armed with deadly weapons with a common object and threatened one Yarapathineni Mattach. A case in C.C. No. 257/05 is pending for trial.

On 09-06-2006 at 6 p.m. when the detenu and 10 others followed by 25 unknown persons formed themselves into an unlawful assembly armed with deadly weapons and country made bombs attached on the TDP party people, a case in Cr. No. 70/06 under section 147, 148, 307 r/w 149 IPC was registered and pending

investigation.

On 09-06-2006 at 6.30 PM the detenu along with 26 others hurled bombs against their rival TDP group people and their houses. Basing on which a case in Crime No. 71/06 under section 147, 148, 307 r/w 149 IPC and Sec. 3 & 5 of ES Act was registered.

4. Basing on the above material, the 2nd respondent- Collector and District Magistrate, Guntur, having satisfied that the activities of detenu are found to be dangerous and as such he is a 'goonda' as defined under Section 2 (g) of the Act and passed the order of detention on 24-06-2006.

5. The Government of A.P. by G.O. Rc. No. 3524, General Administration (L&O-II) Department, dated 04.07.2006 approved the order of detention. The said order was placed before the Advisory Board and the opinion is awaited.

6. The detention was challenged on the ground that the grounds of detention do not fall under any of the Chapters of the Indian Penal Code referred to in Section 2 (g) of the Act and they are irrelevant. If the order of detention is placed on irrelevant material in would connote that there was clear non-application of mind and the order of detention is liable to be set aside. It is illegal detention.

7. The 2nd respondent, District Collector, filed counter *inter alia* alleging that all the grounds were taken into consideration for assessing the criminal conduct of the detenu. Therefore, the order of detention cannot be set aside.

8. The power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the detaining authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a

court of law, except on the ground of mala fides. A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under Section 7 of the Act. In this regard, it is useful to consider the definition of the word 'goonda' under the Act.

> Section 2 (g) of the Act reads as follows:-
>
> "gooda" means a persons, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

Admittedly, the ground No.1 is under 107 Cr.P.C. while the ground No.5 relates to the offences under Section 3 & 5 of Explosive Substances Act and Arms Act. At the cost of repetition, we may state that none of these grounds attract the definition of Section 2 (g) of the Act. They are not the offences punishable under Chapter XVI or Chapter XVII or Chapter XXII or XXII of the Indian Penal Code. Undoubtedly, the detaining authority had passed the orders on irrelevant grounds.

9. By a long line of decisions, it has been settled that where one of the grounds is vague or irrelevant, the entire order must be pronounced to be bad. The leading decision on this point is that of the Federal Court in **Keshav Talpade v. Emperor**[1] wherein it was stated:-

> "If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them."

Where out of the two grounds given for detention, one was admitted to be unsubstantial or non-existent, the question examined was whether the order could be allowed to stand in such circumstances. The Supreme Court in **Shibban Lal v. State of Uttar Pradesh**[2] observed:

> "To say that the other ground, which still remains, quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

The Court has consistently held that it is not possible to say if the defective grounds would have or would not have influenced decision of the detaining authority vide Dwarkadas Bhatia v. State of Jammu and Kashmir (AIR 1957 SC 164). Similar situation would arise if one of the grounds is found to be invalid.

10. We point out that the order which the 2nd respondent purported to make in this case under Section 2 (g) of the Act is not one inconformity with the provisions of that Section. Since the detention order was passed under irrelevant grounds, necessarily the same has to be set aside.

11. In the result, the writ petition is allowed and the order of detention is set aside. The detenu shall be set at liberty forthwith. No costs.

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J.

CHELAMESWAR, J

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D. APPA

RAO,J

11th August , 2006

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[1] AIR 1943 FC 1

[2] AIR 1954 SC 179